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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Third periodic reports of States parties due in 1990

Addendum

HUNGARY*

[28 October 1991]

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* For the initial report submitted by the Government of Hungary, see document CCPR/C/1/Add.11 and for its consideration see CCPR/C/SR.32 and SR.33, or Official Records of the General Assembly, Thirty-second session, Supplement No. 44 (A/32/44), paras. 130-132. For additional information submitted subsequent to the initial report, see document CCPR/C/1/Add.44 and for its consideration by the Committee see CCPR/C/SR.225 and SR.228, or Official Records of the General Assembly, Thirty-fifth session, Supplement No. 40 (A/35/40), paras. 307-333. For the second periodic report of Hungary, see document CCPR/C/37/Add.1 and for its consideration, see CCPR/C/SR.684-SR.688, or Official Records of the General Assembly, Forty-first session, Supplement No. 40 (A/41/40), paras. 371-410.

I. GENERAL OBSERVATIONS

1. As a State party to the International Covenant on Civil and Political Rights Hungary submitted its first report on the implementation of the Covenant on 16 May 1977; it was considered by the Human Rights Committee during its second session on 19 August 1977 (CCPR/C/1/Add.11). The supplementary report thereto was submitted by Hungary on 28 May 1979 and was considered by the Human Rights Committee during its tenth session on 17 and 18 August 1980 (CCPR/C/1/Add.44). The second periodic report was submitted on 8 July 1985 and was considered by the Committee during its twenty-eighth session on 14, 15 and 18 July 1986 (CCPR/C/37/Add.1).

2. During the period since the submission of the previous periodic report, the Hungarian society has undergone a radical, profound and fundamental change. The communist one-party system with its socio-political order has been replaced by a pluralist society, a functioning democracy and the rule of law.

3. Having taken office after the multi-party elections in April 1990, the new Government introduced institutional changes (establishing new bodies and appointing State secretaries responsible for specific human rights tasks) to strengthen, as part of its efforts, the operation of Hungary's human rights mechanism, which will be covered extensively in section II on the implementation of the provisions of the Covenant.

4. Respect for human rights and fundamental freedoms has been a major driving force of the democratic transition, which has taken place in Hungary within the framework of law. The legislative process still under way has resulted in a radical change in Hungary's legal system in the wake of the political and social transition. This reregulation of all spheres of life is of paramount significance for the realization of the rights recognized by the Covenant and for the obligations of the State spelled out therein.

5. The change of regime has brought the Hungarian system of law essentially into line with the Covenant. Act XXXI of 1989 (amending the Constitution) introduced a new chapter (chapter XII on Fundamental Rights and Duties) into the Constitution of Hungary (Act XX of 1949), regulating fundamental rights and duties in the same way and with the same wording as does the Covenant in accordance with and in the spirit of the country's international treaty obligations concerning the assurance of human rights. The compilation below reflects a comparative survey of these rights by the Constitution and the Covenant:

	Covenant	Constitution
Non-discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status	art. 2	art. 70/A
Equal rights of men and women	art. 3	art. 66 (1)
Right to life	art. 6	art. 54 (1)

	Covenant	Constitution
Prohibition of torture or inhuman treatment	art. 7	art. 54 (2)
Prohibition of servitude, slavery and forced labour	art. 8	(This is not covered by a specific constitutional provision as prohibition of slavery is duly enforced by Hungary's ratification of international agreements and their incorporation into domestic law.)
Right to liberty and security of person, extent of limitations of this right in criminal procedure	art. 9	art. 55
Humane treatment of persons deprived of their liberty	art. 10	No constitutional provision. See section II.
Right to liberty of movement and freedom to choose one's residence	art. 12	art. 58 (1)
Prohibition of unlawful expulsion of aliens	art. 13	art. 58 (2)
Right to a fair trial	art. 14	art. 57 (1)
Non-retroactive effect of criminal law	art. 15	art. 57 (4)
Right to legal capacity	art. 16	art. 56
Protection of privacy (family, home or correspondence)	art. 17	art. 59
Right to freedom of thought, conscience and religion	art. 18	art. 60
Right to freedom of expression	art. 19	art. 61
Right of assembly	art. 21	art. 62
Right to freedom of association	art. 22	art. 63
Protection of the family, the right to found a family	art. 23	art. 67 (3)
Protection of the child	art. 24	art. 67 (1)

	Covenant	Constitution
Right to take part in the conduct of public affairs	art. 25	art. 70
Equal rights before the law	art. 26	art. 57 (1)
Rights of minorities	art. 27	art. 68

6. New acts, as well as several amendments, have been adopted to ensure practical exercise of these rights recognized by the Constitution as the fundamental law.

7. The new legislation includes amendments to the Criminal Code, the Civil Code, the Code on Criminal Procedure, the Code on Civil Procedure, the Rules on the Enforcement of Punishments, the Labour Code, the Family Law and the establishment of the Constitutional Court. New acts have been adopted on the freedom of conscience and religion, the church, the freedom of association, the freedom of assembly, the right to strike, the functioning and financing of political parties, referendums and people's initiatives, the Election Law, local self-governments, travel abroad and passports, emigration and immigration, and the freedom of the press. They will be discussed in detail, in the context of the Covenant, in reviewing the implementation of the relevant provisions of the Covenant.

II. IMPLEMENTATION OF THE PROVISIONS OF THE COVENANT

Article 1

8. The right to self-determination is respected in the Republic of Hungary in accordance with the provisions of the Covenant. The Republic of Hungary was proclaimed on 23 October 1989. For the first time after more than four decades, in April 1990 free, democratic and pluralist parliamentary elections, and in September 1990 municipal elections, were held.

9. The people's right to self-determination is respected by the Republic of Hungary in compliance with its international commitments.

Article 2

10. The implementation of article 2 is guaranteed by article 70/A of the Constitution. In ensuring implementation of article 2 (1) of the Covenant, the prevailing system of law defines "persons", "natural persons", "Hungarian nationals and aliens" and "stateless persons" as subjects of fundamental rights and duties. It should be noted in particular that article 70/A, paragraph 3, of the Constitution includes elimination of inequality of opportunity as an additional means of achieving equal rights.

11. The Labour Code as amended in 1989 provides that in employment workers shall not be subject to discrimination on grounds of sex, age, nationality, race, origin, religious or political belief, or membership in workers' representative organizations.

12. The Republic of Hungary is a party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol which were promulgated by Law-Decree No. 15 of 1989. This legislation prohibits discrimination against refugees on grounds of race, religion or country of origin and accords to them the same treatment as is accorded to aliens except where the Convention contains more favourable provisions, i.e. the Convention does not provide for equal treatment with the States' own citizens.

13. The rights to freedom of religion, freedom of association, free access to courts and administrative authorities, and freedom of movement as set forth in the International Covenant on Civil and Political Rights are also recognized for refugees, and the Convention prohibits expulsion or return of refugees save on grounds of national security or public order and in accordance with due process of law.

14. Law-Decree No. 19 of 1989 on the status of persons considered as refugees, in giving effect to the provisions of Law-Decree No. 15 of 1989, provides that persons considered as refugees shall be deemed to be Hungarian citizens for the purposes of application of law. (Consequently, the provisions on refugees will not be discussed separately in the contexts of articles 12, 13, 18 and 21 of the Covenant.)

15. The provisions on non-discrimination on grounds of sex will be discussed under article 3 and those on equal opportunity for minorities will be covered under article 27.

16. Concerning article 2 (2), the Covenant forms an integral part of the Hungarian legal system.

17. As regards the system of legal remedies (art. 2 (3)), in a suit at law before courts of first instance there may be a recourse to one-tier appeal within appropriate time-limits. Appeal is not subject to any formal requirements.

18. Under specific conditions, the final judgement may be contested by application for a new trial or by raising a protest on legal grounds by the President of the Supreme Court or the Chief Public Prosecutor.

19. The two-tier system of appeal against administrative decisions is supplemented by the prosecutor's protest, and, under Act XC of 1991 on the status, office and functions of the Commissioner of the Republic, the Commissioner may, in exercise of his power of legality control, review such decisions of local self-governments as are not referred by law to the competence of other organs.

20. Legislation allowing unrestricted recourse to appeal against all administrative decisions to the courts is to be introduced in the near future and will undoubtedly represent one of the most significant developments in this respect. In addition to introduction of administrative jurisdiction, a major role in remedying wrong decisions of administrative authorities will be reserved for the Ombudsman of Civil Rights. (It is to be noted that the ongoing transformation of the judicial system can be expected to result in the reintroduction of a two-tier system of legal remedies.)

21. The establishment of the Constitutional Court was a cornerstone of the introduction of the rule of law in the country (chap. IV of the Constitution).

22. The Constitutional Court is responsible, among other things, for determining the constitutionality of statutory provisions and the preliminary examination of certain provisions of draft laws in order to prevent Parliament from adopting laws contrary to the Constitution. In cases where unconstitutionality is established, the Constitutional Court annuls laws and regulations; its preliminary control function may serve to prevent unconstitutional laws or regulations from entering into force.

23. In the context of this article of the Covenant, however, importance is attached to consideration by the Constitutional Court of constitutional complaints. Article 48 (1) of the Act on the Constitutional Court provides that any person may lodge a constitutional complaint with the Constitutional Court, provided that all other remedies have been exhausted or no other remedy is available, alleging that his rights have been violated by the application of an unconstitutional provision of law in respect of his rights. A constitutional complaint may be lodged within 60 days after the delivery/ receipt of the relevant final decision.

24. This kind of remedy is consequently available in case of violation of any of the rights recognized in the Covenant. In the absence of a standard remedy, the person whose rights were allegedly violated may, as a first step, apply directly to the Constitutional Court, whereas he may lodge a constitutional complaint even after he has exhausted all standard remedies.

25. In addition to legal remedies provided by domestic law, Hungary has recently taken several steps towards securing remedies that can be sought for individual grievances before international fora. In September 1988 it recognized the competence of the Human Rights Committee set up by the Covenant to consider communications concerning violations of rights in relations between States parties. Also in September 1988 it became a party to the Optional Protocol to the Covenant, which was promulgated and made a part of domestic law by Law-Decree No. 24 of 1988, thus allowing individuals, after domestic remedies have been exhausted, to submit complaints to the Committee about violations of rights stipulated in the Covenant.

26. Appropriate publicity was given to this possibility in the media, including the printed and electronic press.

27. Hungary has signed the European Convention on Human Rights and will recognize the competence of the European Commission on Human Rights and the European Court of Human Rights concerning submission of communications after exhaustion of domestic remedies, by its citizens and persons residing permanently in Hungary who claim that the State has violated their rights recognized by the Convention.

28. With a view to reducing resultant conflicts to a reasonable minimum, the Hungarian legal system is being reviewed so as to comply fully with the requirements of this international forum for legal assistance, which is to become accessible upon ratification. Hungary is aware that during the past

decades it has failed to meet international standards with respect to the regulation of human rights and that although adjustments have already been made at the level of the Constitution and legislative enactments on fundamental rights, a great deal is yet to be accomplished as regards matters of detail.

Article 3

29. The implementation of article 3 is guaranteed by article 66 (1) of the Constitution.

30. In addition to what has been stated under article 2, the Labour Code provides that women shall not suffer any disadvantage in employment, their employment shall not be terminated on account of pregnancy, and employment shall not be denied to them on account of maternity.

31. The Republic of Hungary is a party to the Convention on the Elimination of All Forms of Discrimination against Women and submitted the third periodic report on the implementation of the Convention in 1991.

32. The reporting period has witnessed consistent tendencies for legislation to give effect to equality, particularly in the field of social security. Certain services were formerly available only to mothers and widows. Thus, for instance, a child-care allowance which was formerly due solely to the mother is today also payable to the father after the child's first birthday. Similarly, since 1989, the entitlement to a widow's pension, which was due only to the wife, has been extended to the deceased's husband. Strengthening of this trend in order to reach equality is expected to continue.

33. The Family Law (Act IV of 1952 on Marriage, Family and Guardianship) as modified by Act IV of 1986 has established the same marriageable age for both men and women, requiring the attainment of majority (18 years of age) rather than 16 years, as was previously the case. In justified cases the guardianship authority may permit both men and women to contract a marriage at the end of their sixteenth year.

34. The retirement age is currently 60 years for men and 55 years for women. A petition to declare this difference unconstitutional is being considered by the Constitutional Court at present.

Article 4

35. Article 19/D of the Constitution, inserted by amendment, requires the votes of two thirds of members of Parliament for the adoption of detailed rules applicable during a state of emergency. The relevant bill had not yet been submitted to Parliament at the time of writing.

Article 6

36. The death penalty as an exceptional kind of punishment existed in Hungary until 1990. Although the regulations imposed on it satisfied the requirements of the Covenant (it was resorted to only for the most serious crimes, was

commutable by pardon in the case of persons under 18 years of age, etc.), its very existence was inappropriate in a penal system based on European legal principles.

37. Act XVI of 1989 amending Act IV of 1978 (Criminal Code) abolished the death penalty for political crimes (crimes against the State). The Constitutional Court, in its Decision No. 23/1990. (X. 31.) AB, subsequently declared the death penalty to be unconstitutional and annulled the relevant provisions of the Criminal Code and the Code on Criminal Procedure (Act I of 1973). Furthermore, the Constitutional court ordered a review of the criminal proceedings in which the death penalty had been imposed and which had been concluded by final judgements, but where the sentences had not yet been carried out. The Court justified its decision by stating that the death penalty was contrary to the constitutional provisions (art. 8 (2) and art. 54 (1)) prohibiting limitations on the main substance of the right to life and human dignity.

38. It should be noted, however, that the death penalty was rarely applied (it was imposed only for the most serious crimes) and that no death sentence had been carried out in Hungary since 1989.

39. The question of abortion has recently become the focus of public attention. The social organization Pacem in Utero submitted to the Constitutional Court a petition for a revision of the current liberal regulations based on social consensus, with a view to securing legislative restrictions on abortion.

40. Under the relevant decree of the Minister of Health currently in force abortion is virtually free of any restriction and may be performed at the request of a pregnant woman until the twelfth week of pregnancy, either free of charge or for a charge, depending on the pregnant woman's social situation.

41. The advocates of restriction would allow abortion in three cases: impairment of the embryo's health, impairment of the mother's health, and pregnancy as a consequence of rape. Among their arguments, the petitioners referred to the low birth rate and the ageing of the population. The annual average number of abortions performed in Hungary is 85,000, with 63 abortions for 100 live births.

42. The regulation of abortion is the subject of a broad social debate. A large part of public opinion (including women's social organizations) is resolutely against a more restrictive regulation, favouring the maintenance of the present regulation and emphasizing the importance of sex education and the use of appropriate birth control methods.

43. The future regulation of abortion depends on the decision of the Constitutional Court.

Article 7

44. The provisions of article 7 are covered by article 54 (2) of the Constitution.

45. In 1987 Hungary became a party to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was promulgated and made a part of domestic law by Law-Decree No. 3 of 1988. The first report of Hungary on the implementation of the Convention was submitted to and taken note of by the Committee against Torture in November 1989.

46. The reporting period has witnessed a significant change in this respect: Hungary has withdrawn its reservations concerning article 20 of the Convention (Law-Decree No. 3 of 1988 was accordingly modified by Act LIX of 1990), thereby recognizing the competence of the Committee against Torture to conduct inquiries in States where - according to reliable information - torture is being systematically practised to submit findings thereon. At the same time Hungary recognized the competence of the Committee (arts. 21 and 22) to receive and consider communications from States and individuals. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is under consideration with a view to its ratification.

47. Act LIV of 1989 amending the Criminal Code abolished aggravated detention as a punishment for a crime on the grounds that it was a measure involving deprivation of liberty for an indefinite period of time after a sentence of imprisonment had been served and was therefore not in accordance with the principles of a humane penal system.

48. Act XIV of 1990 abolished the treatment of alcohol addicts in an institute for work therapy as a form of compulsory medical treatment.

Article 8

49. With respect to article 8, the information given in section I should be supplemented by the following:

(a) Paragraph 3 (a): penal idleness, which had been a crime, was abolished by Act XXIII of 1989;

(b) Paragraph 3 (b): sentencing offenders to community service is a form of enforcing the punishment of educative labour; in practice, this kind of punishment for a crime does not really exist;

(c) Paragraph 3 (c): conscientious objection to military service has been duly regulated. Article 6 of Act XXII of 1989 amending Act I of 1976 on National Defence introduced civil service as a new form of military service, permitting conscientious objectors to perform work at civilian places of work (art. 26/A) as their military service.

Article 9

50. The provisions of article 9 are covered by article 55 of the Constitution.

51. Act XXVI of 1989 provided significant guarantees with respect to coercive measures applicable during criminal proceedings, including observation of the accused's mental state involving deprivation of liberty in connection with evidence. Whereas formerly it was in the prosecutor's competence to decide on

such measures before presentation of the indictment, under the new regulation the decision lies with the court at every phase of the proceedings. This regulation has caused the courts to have judges on duty at weekends and on other non-working days in order to be available for related tasks.

52. The same Act substantially modified the rules of Act I of 1973 (Code on Criminal Procedure) regarding arrest and detention (arts. 91 to 97):

(a) The duration of detention was extended from 72 hours to five days, but detention must be terminated within 72 hours unless arrest has been proposed by the prosecutor;

(b) The authority must notify without delay the person designated by the suspect that he has been detained;

(c) It is solely in the court's competence to order or to prolong arrest, but the prosecutor may also terminate it before presentation of the indictment;

(d) The authorities are not required to inform the suspect's employer of his arrest;

(e) The arrested person may communicate with his defence counsel before the first hearing.

53. Temporary compulsory medical treatment (art. 98 of the Code of Criminal Procedure) and prohibition from leaving the domicile (art. 99) were likewise modified by the Act mentioned above: it is solely for the court to order or to prolong temporary compulsory medical treatment, but the prosecutor may also terminate it before presentation of the indictment.

54. Similarly, under the Act, it is exclusively the court which has the right to decide to send a suspect to a mental hospital for observation of his mental state.

55. Act XIV of 1990 abolished the medical treatment of alcohol addicts in an institute.

56. In accordance with the modification of the Code on Criminal Procedure by article 53 of Act IV of 1987, the defendant can be brought to trial within eight days, as opposed to six under the previous regulation, following the commission of the crime, under specific conditions for a simplified and accelerated procedure.

57. Under the rules of the Code on Criminal Procedure on indemnification (arts. 383 to 385), as modified by article 67 of Act IV of 1987, an indemnification for arrest and temporary compulsory medical treatment shall be due in cases where criminal proceedings have been terminated for a reason excluding punishability (save the low degree of an act's danger to society and the absence of private prosecution) or upon retraction of the charges. An indemnification shall also be due for a prison term served by virtue of a non-appealable sentence, provided that the criminal proceedings have been terminated upon retraction of the charges.

58. It is important to note on this point that the status under labour law of persons who have been subjected to certain measures restrictive of personal liberty was regulated by a government decree in March 1990. At the same time Parliament adopted a decision on compensation for persons unlawfully restricted in their personal liberty during the period 1945 to 1963.

59. Article 70 of Act IV of 1987 introduced the legal institution of bail. If the suspect lives abroad, the proceedings may, at his request, be conducted in his absence against payment of a security deposit.

Article 10

60. A comprehensive reform of the law governing the enforcement of punishments is under preparation. The future regulation of the custody and treatment of prisoners as well as of their rights and duties is expected to be fully in accordance with the country's international treaty obligations, including those under the Covenant (although the guarantees laid down in article 10 concerning the enjoyment of rights are observed by the rules of Law-Decree No. 11 of 1979 relating to the enforcement of punishments and measures).

61. The standards established by Recommendation R 87/3 on the European penitentiary system, adopted by the Committee of Ministers of the Council of Europe in February 1987, will be applicable in this respect.

62. Mention should also be made of Decree No. 8/1990. (IV.27.) of the Minister of Justice on the exercise of religion by convicts, which guarantees the enjoyment of this right in penitentiary institutions. Prisoners are free to worship, to receive spiritual guidance, to keep devotional objects and religious books; they are allowed to be baptized, to have church weddings and church funerals; they may freely communicate with their pastor in their leisure time without restriction or control.

63. In addition, the decree of the Minister of the Interior on enforcing detention and arrest in the station house was supplemented by a provision allowing detainees to receive spiritual guidance from the pastor of their church without restriction of communication, to exercise their religion in groups, and to keep, in addition to articles for personal use, such devotional objects as are needed for religious worship and pose no danger to the security of detention. However, exercise of these rights must not interefere with the measures and functioning of the court, the prosecutor and the investigating authority or prejudice the interests of criminal procedure.

Article 11

64. There were no new regulations during the reporting periods concerning the provisions of article 11.

Article 12

65. The implementation of article 12 is guaranteed by article 58 (1) of the Constitution.

66. The provisions of this article are incorporated into the Hungarian legal system by Act XXVIII of 1989 on Travel Abroad and Passports, which declares travel abroad and return as well as possession of a passport to be fundamental human rights subject to restrictions only in exceptional cases specified by law. Restrictions include prosecution for a criminal offence subject to a punishment graver than imprisonment for a term of three years, an enforceable sentence of imprisonment yet unserved, possession of State secrets and liability for military service; however, travel may, on grounds of equity, be authorized even under such circumstances.

67. In this connection, article 277 of the Criminal Code on illegal crossing of the frontier was also essentially modified, deeming this a crime only when committed by a person who crosses the State frontier carrying arms without authorization or illegally.

68. Another basic law related to this article is Act XXIX of 1989 on Emigration and Immigration, under which it shall be a fundamental right of every Hungarian citizen to choose freely his residence, to leave and to return to Hungary. This right shall not be subject to any restrictions except those established by law, i.e. in addition to the provisions of Act XXVIII of 1989, a person who has not paid his taxes and dues, is incapable of action or has limited disposing capacity failing permission of the competent authority, or has failed to provide for the maintenance of his child of limited or no disposing capacity who is to remain in Hungary, may not emigrate from the country.

69. Under this Act, every Hungarian citizen living abroad is free to return to Hungary without any restrictions. Immigration of aliens is denied only for reasons of national security, public order, public health, public morals, infringement of the rights and liberty of others, or commission of a serious crime. An immigration permit may be denied to an alien who has no means of subsistence and residence in Hungary or is unlikely to integrate into society, or who has been expelled from Hungary.

70. All the afore-mentioned restrictive measures are subject to appeal before the court.

71. Act XXVII of 1990, repealing decisions depriving individuals of Hungarian citizenship, allows any person deprived of his civic rights due to his having failed, despite summons, to return home from an unauthorized stay abroad, to regain Hungarian citizenship.

Article 13

72. The implementation of article 13 is guaranteed by article 58 of the Constitution.

73. Under article 61 of the Criminal Code, an alien whose stay in Hungary is undesirable shall be expelled from the territory of the Republic of Hungary. The person expelled shall leave the country and may not return except with special permission.

74. This provision is applicable to aliens or Stateless persons who have committed a crime, but not to persons with dual citizenship.

75. Expulsion can be ordered exclusively by the court, so aliens enjoy all the procedural rights for defendants recognized by the Code on Criminal Procedure (presumption of innocence, right to defence, right to use the mother tongue, right to legal remedy, oral procedure, public hearing, right to be informed).

Article 14

76. The implementation of article 14 (1) is guaranteed by article 57 (1) of the Constitution.

77. Access to the courts is ensured by article 70/K of the Constitution, which, however, allows review by a court only in cases where fundamental rights have been violated.

78. In its Decision No. 26/1990 (XI.8.), the Constitutional Court declared unconstitutional and annulled the provisons of Act III of 1952 (Code on Civil Procedure), which allowed the court to consider cases without a hearing, because they were contrary to article 14 of the Covenant. The petitioner had specifically invoked the relevant provision of the Covenant and the Constitutional Court, in stating the reasons on which it had based its decision, noted that Hungary's civil procedure was in conflict with article 14 of the Covenant.

79. The establishment of administrative courts is an indispensable guarantee for the full exercise of the right of access to the courts. The relevant bill was submitted to Parliament in December 1989, but due to its excessive workload Parliament has not so far been able to consider or act on it. If adopted, the new law on administrative jurisdiction will lay down the general rule that, with the exception of a few specific cases, all administrative decisions may be referred to the court. A problematic aspect of this question will be the cases of "quasi-offences" such as petty offences, the disciplinary punishments inflicted by superiors on persons in the military and involving deprivation of liberty, and the disciplinary offences of persons restricted in their liberty at penitentiary institutions, in which it will probably become necessary to open access to the court.

80. An important modification of the law of criminal procedure contained in article 1 of Act XXVI of 1989 requires a court judgement passed during a trial to be pronounced in public, even in cases where publicity has been excluded.

81. The implementation of article 14 (2) is guaranteed by article 57 (2) of the Constitution.

82. Presumption of innocence is a basic principle of criminal procedure (art. 3 of the Code on Criminal Procedure).

83. The guarantees enumerated in article 14 (3) of the Covenant are likewise basic principles of criminal procedure (arts. 4 to 11 of the Code on Criminal Procedure), which are embodied in numerous provisions governing details throughout the proceedings. In this context, special mention should be made of the following amendments:

(a) Act XXVI of 1989 has entitled suspects to communicate with their defence counsel orally and in writing without restriction from the moment of arrest, i.e. even before a hearing has been held;

(b) The same Act repealed the provision of the Code on Criminal Procedure which made the presence of the defence counsel at the hearing of witnesses subject to the permission of the investigating authority;

(c) Furthermore, it inserted a provision under which the defendant shall be advised at the beginning of his questioning that he is not under an obligation to make a confession and has the right to refuse to do so, and that what he says can be used as evidence. In the absence of such information the defendant's confession shall not be taken into account as evidence.

84. With respect to article 14 (4), Act XXVI of 1989 modified the criminal procedure by making it a discretionary right of the court to decide whether, in view of the age of minors and of the interest involved in their re-education, to pronounce in public a judgement passed during a trial in camera.

85. The implementation of article 14 (5) is guaranteed by article 57 (5) of the Constitution.

86. The right to a legal remedy is a basic principle of the criminal procedure (art. 7 of the Code on Criminal Procedure). Both the accused and his defence counsel as well as the prosecutor (in the case of minors, the legal representative) may lodge an appeal against a verdict of guilty or the penalty imposed, or both.

87. The question of compensation (art. 14 (6)) is regulated by the Code on Criminal Procedure (arts. 383 to 385) in accordance with the principles set forth in the Covenant. The relevant amendments have been discussed under article 9.

88. The principle of ne bis in idem (art. 14 (7)) is a basic provision of the law of criminal procedure (art. 13 (d) of the Code on Criminal Procedure). The only legal exceptions are a new trial and a protest on the grounds of legality.

Article 15

89. The principles of nullum crimen sine lege and nulla poena sine lege are implemented by article 57 (4) of the Constitution. These principles form the basic provisions of the Criminal Code (art. 2 on the Code's temporal scope of application).

Article 16

90. The provision of article 16 as a general principle is implemented by article 56 of the Constitution.

Article 17

91. The implementation of article 17 is guaranteed by article 59 of the Constitution. Legislation on the protection of personal data requires the votes of two thirds of the members of Parliament.

92. There have been several important changes with respect to the protection of privacy:

(a) Act XXV of 1989 inserted in the Code on Criminal Procedure a provision under which the result of evidence taken in contravention of law shall not be taken into account as evidence. The principle of free evidence is thus subject to restriction in the interest of protecting civil rights;

(b) In Act X of 1990 Parliament established temporary rules for authorizing the use of special devices and methods by the secret service. Any device or method applied without the awareness of the person concerned and whose use violates the rights to the protection of privacy, correspondence and personal data shall be deemed to be a special device; such devices shall not be used except to obtain pertinent data which are deemed to be important to the interests of the State and of national defence or are necessary for the detection of a serious crime, and which cannot be otherwise obtained. Such devices may be used by the secret services and the criminal police, subject to written and prior permission of the Minister of Justice, in individual cases and for limited periods of time. If the use of such a device fails to substantiate grounds for starting criminal proceedings against the person under surveillance, that person shall subsequently be informed of the measure taken and the data thus obtained shall be destroyed;

(c) Article 8 of Act XI of 1990 amending Act II of 1986 on the Press (Press Law) included a provision empowering the court to impose on a press organ a fine of up to 500,000 Hungarian forints for violation of personal rights; such fine may be used for public purposes;

(d) The abolition in the recent past of the identity number was an important step towards a State adhering to the rule of law and achieving full protection of personal rights. In its Decision No. 15/1991 (IV.13.), the Constitutional Court stated that the identity number as a general and uniform sign with no restriction on its use was unconstitutional. Therefore, the Court repealed with immediate effect the provision of law which ordered the mandatory use of the identity number in official documents, records and in administrative and judicial proceedings as well as on identity cards. Accordingly, as of the date of publication of the decision, no one has the right to demand disclosure of the identity number and to make the exercise of any right or the provision of any service subject thereto. At the same time, the Court empowered the National Office of Population Records to devise new personal numbers until 31 December 1991 and to use them for internal

identification. This was necessary to ensure that the source of available data might be preserved intact until the legislature decides on the establishment of a new, constitutionally appropriate system to replace the current system of population records.

Article 18

93. The provisions of article 18 are implemented by article 60 of the Constitution.

94. The freedom of conscience and religion recognized in this article of the Covenant is guaranteed by Act IV of 1990 which states (in art. 1) that this right is a fundamental human freedom and that its free exercise shall be guaranteed by the Republic of Hungary.

95. Related guarantees are provided by the legislative provisions which prohibit registering any data relating to religious and other beliefs in State records supplied to any person except the person concerned, or any information on data of that kind already available. The Act ensures:

(a) The right of parents to decide on the moral and religious education of minors;

(b) The right of individuals and communities at social, medical and penitentiary institutions to practise religion;

(c) The free and individual practice of religion by persons performing military service at military establishments;

(d) The freedom to found a church.

96. In this context, article 5 of Act XV of 1990 amending Act IV of 1952 on Marriage, Family and Guardianship repealed article 73 of the latter, which stipulated: "it shall be ensured that the child is educated in a socialist spirit and efforts shall be made to see that he/she will be faithful to the idea of socialism".

97. Offenders against these fundamental freedoms face penal or administrative sanctions. The Criminal Code was supplemented by a new article under which a person who violates the freedom of conscience and religion by force or threats shall be punished with imprisonment for a term of up to three years. Infringement of the constitutional rights of others may be the only limitation on this freedom.

98. It should also be mentioned that Law-Decree No. 14 of 1989 has abolished the State Office for Church Affairs and Law-Decree No. 17 of 1989 regulating the functioning of religious orders. This legislation established guarantees for the separation of Church and State on the one hand and for the activities of religious orders in Hungary on the other.

99. Religious instruction as an optional subject has recently been reintroduced in primary schools.

100. An important development with respect to the separation of Church and State is that in 1990 the Government denounced the agreements concluded with certain churches and denominations in 1948 and 1950.

Article 19

101. The implementation of article 19 is guaranteed by article 61 of the Constitution.

102. These provisions of the Covenant are implemented by Act II of 1986 on the Press, at present under review and modification, which ensures the right of everyone to disseminate his or her ideas and art in printed form. Under Act XI of 1990, which amended the Press Law, commission of a crime or instigation to commit one, protection of public morals and respect for the personal rights of others are the only limitations on the freedom of the press. That amendment entitled any person, natural or juridical, to establish a periodical, a local radio station or a television studio, whereas the previous legislation recognized this right only for State, social and economic organizations and for associations.

103. The cases in which a permit concerning the activity of the press can be refused or a publication can be prohibited are enumerated by law. A more liberal reregulation is awaiting consideration and action by the Parliament.

104. Appointment of the heads of the public media (Hungarian Radio, Hungarian Television, Hungarian News Agenda) was a Government prerogative until July 1990. With a view to achieving a fuller implementation of the freedom of the press as laid down in the Covenant and satisfying the social demand for impartiality in this field, Act LVII of 1990 empowered the President of the Republic of Hungary to appoint the heads of these institutions. However, the countersignature of the Prime Minister is required for the exercise of this power.

Article 20

105. There were no new developments concerning the implementation of article 20 (1).

106. Concerning article 20 (2), Act XXV of 1989 modifying the Criminal Code abolished "incitement" and "injury to the community" as offences against the State and included "incitement against the community" among the offences against public order, thus punishing violators of the prohibition contained in this article of the Covenant.

Article 21

107. The provisions of article 21 are implemented by article 62 of the Constitution.

108. The freedom of assembly recognized in this article is guaranteed by Act II of 1989 on the Freedom of Assembly. In exercise of this freedom there may be organized peaceful meetings, processions and demonstrations, where

participants may freely express their opinion. The only limitations are events which constitute a criminal offence or which endanger the rights of others.

109. With a view to protecting public order, the above Act requires prior notification of events organized in a public area; however, the authorities may not prohibit such an event nor disperse it after preliminary warning, except in case of danger of a serious violation of public order. If such an event is dispersed, a lawsuit may be brought to establish whether or not the dispersion was unlawful. This Act included a new offence in the Criminal Code: "violation of the freedoms of association and assembly" is committed by a person who resorts to violence or threats unlawfully to prevent others from exercising these freedoms or who, resorting to violence or threats, offers resistance to the measures taken by the organizer of an event with a view to preserving law and order.

Article 22

110. The provisions of article 22 are implemented by article 63 of the Constitution.

111. Act II of 1989 on the Freedom of Association recognizes the right of everyone to form organizations or associations in community with others or to participate in the activities thereof. In exercise of the right of association, private persons, legal entities and their organizations not having juridical status may, for the purposes of their activities and in accordance with the intention of their founders, form and operate a social organization. This right is subject to the same limitations as the freedom of assembly, namely its exercise must not constitute a criminal offence or violate the rights and liberty of others. The Act prohibits establishment of organizations offending the Constitution and organs of the armed forces. Only Hungarian citizens may establish a political party and act as officials thereof.

112. The functioning and financing of political parties are governed by Act XXXIII of 1989, under which political parties cannot operate at workplaces (in order that workplaces may not turn into scenes of political struggles) and, with a view to depoliticizing the armed forces and the police, regular members of these organizations cannot hold an important official post in party organs at the national level or at the local level where they are performing their service.

113. The amount of support for political parties is determined by the Act on State Budget, which, until its modification by Act LXII of 1990 (on 8 August), prescribed quarterly payments a posteriori from the State budget. However, considering that most political parties are not engaged in economic activities and that their incomes from membership, dues and contributions are insufficient to cover operating costs or even to pay them against a letter of credit, it appeared necessary to modify this legislation to allow quarterly allocations in advance.

114. The principle of party neutrality was recently spelled out with respect to prosecutors and judges, whose impartiality is so strict a requirement that practitioners of these professions are also barred from pursuing any political activity.

Article 23

115. The provisions of article 23 are implemented by article 67 (3) of the Constitution.

116. There were no new developments concerning article 23 (1).

117. Concerning article 23 (2), Act IV of 1986 establishing the same marriageable age for both men and women is worth referring to under this article as well (see art. 3). It should be mentioned in this respect that Act XV of 1990 abolished the compulsory waiting period of three months between the declaration of intent to marry and the marriage itself. As that long waiting period had failed to achieve the desired objectives, i.e. to provide sufficient time for due consideration to be given to the decision to marry, to more adequate preparation for marriage and to the establishment of a more enduring marital relationship, the waiting period was shortened to 30 days which the legislature deemed sufficient for couples to avoid hasty marriage after a short acquaintance.

Article 24

118. The provisions of article 24 are implemented by article 67 (1) of the Constitution.

119. Numerous provisions of Act IV of 1986 essentially modified Act IV of 1952 on Marriage, Family and Guardianship:

(a) The Family Law was supplemented by the provision that parents shall decide jointly, even if they live apart, on essential matters affecting the future of the child (determination of the child's name and place of residence, choice of its career);

(b) Competence to settle disputes concerning essential matters is vested in the court, instead of in the guardianship authority, with a view to increased protection of the interests of the child;

(c) Custody of the child is subject primarily to agreement between the parents, the decision lying with the court only in case of parental disagreement;

(d) Parents are duty bound to provide permanent residence for a minor child in their own household even if the child temporarily resides elsewhere;

(e) With a view to increasing parental responsibility and providing increased protection for the child, the court may terminate parental supervision (even barring parents from communicating with the child) if the parent displays an attitude gravely prejudicing the child's physical, mental or moral development;

(f) The new rules on State care establish various degrees of State care for the child according to the extent of the danger to which the child is exposed and of parental responsibility:

(i) The guardianship authority may take such protective and preventive measures as it may deem necessary and appropriate;

(ii) The child may, at the request or with the consent of the parents, be placed in an institution; or

(iii) May, if exposed to danger, be assigned to an educational institute even against the will of the parents;

(iv) In matters demanding immediate measures, the guardianship authority may place the child in an institution or temporarily in the custody of another person and bring a lawsuit to terminate parental supervision;

(v) The court may commit the child to State care, if it has terminated parental supervision because of the parents' attitude gravely prejudicing the child's interest.

120. The above modifications entailed amendments to the Code on Civil Procedure as well. Accordingly, in a lawsuit brought to terminate parental supervision, a court may act promptly or, in case of a grave danger to the child, ex officio and may even hand down a temporary decision.

Article 25

121. The provisions of article 25 are implemented by article 70 of the Constitution.

122. Implementation of this article is guaranteed by Act XXXIV of 1989 on the Election of Members of Parliament and Act LVI of 1990 on the Election of Representatives of Local Self-Governments and Mayors.

123. Suffrage is general and equal and, as a general rule, voting is direct and secret. The electoral system is based on the combination of individual constituencies and party lists. Any Hungarian citizen of age (18 years old) is an elector, except when he:

(a) Is under guardianship which restricts or excludes his capacity for action;

(b) Has been barred by a final court decision from participating in public affairs;

(c) Is serving a prison sentence.

124. Non-nationals permanently settled in Hungary are also entitled to vote in local self-government elections.

125. Any person entitled to vote and living permanently in Hungary has the right to be elected to office (Hungarian citizenship being an added requirement in the case of representatives of local self-governments and mayors). Exercise of the right to vote is optional.

126. The electors, candidates and parties concerned may lodge complaints with electoral bodies against violations of the electoral law, and a negative decision may be appealed before the court. If a provision of law has affected the results of an election, the court may order part or all of the election to be repeated.

127. Act XVII of 1989 on Referendum and People's Initiative has declared referendums and people's initiatives to be a right of citizens as a direct form of exercising power. Citizens entitled to vote have the right to participate in a referendum or a people's initiative. A referendum may be held or a people's initiative launched at the national level as well as at local levels.

128. An amendment to the Penal Code sanctions with imprisonment for a term of up to three years, the violation of the laws governing elections, referendums and people's initiatives.

129. The original provision of the Electoral Law disqualifying persons who are abroad on polling day from the exercise of their right to vote amounted to a grave curtailment of the right to vote. That provision was held to be unconstitutional and annulled by the Constitutional Court in its Decision No. 3/1990 (III.4.); this resulted in a gap in law, since the Electoral Law contained no provision on how the right to vote could be exercised by Hungarian citizens who were abroad on polling day. The Court called the attention of Parliament to the need to fill this gap, which has since been bridged.

Article 26

130. The implementation of article 26 is guaranteed by article 57 (1) of the Constitution. There were no new regulations during the reporting period.

Article 27

131. The implementation of article 27 is guaranteed by article 68 of the Constitution.

132. An amendment to the Criminal Code inserted the crime of "incitement against the community" to ensure the protection under the criminal law of national, religious or linguistic minorities against violators of their rights.

133. For the purpose of attending to State responsibilities concerning national and ethnic minorities, Government Decree No. 34/1990 (VIII.30.) set up the Office of National and Ethnic Minorities as an independent administrative body with nationwide competence to perform coordinating functions during the preparation of government decisions and regulations as well as during operational work relating to minorities. It is noteworthy that the officials of the Office are all, with one exception, persons belonging to minorities.

134. Government Decree No 1068/1990 (IV.12.) regulates the establishment of foundations for minority policy purposes. It has set up a foundation with 20 million Hungarian forints of support for national and ethnic minorities living in Hungary and one with the same amount of support for Hungarians living outside its borders. The financing for the foundations was provided by budgetary allocations approved for minority purposes in 1990 and made available to the Office of National and Ethnic Minorities.

135. In 1991 the Parliament earmarked 200 million forints in budgetary support for minority organizations.

136. The parliamentary representation of minorities has not yet been satisfactorily resolved. Although representatives of minorities are present in Parliament, they represent parties rather than minorities as such.

137. A law on the rights of national and ethnic minorities is under preparation with the participation of representatives of the minorities. It will comply with the provisions of the Covenant, international conventions and documents. The main thrust of the bill is the following:

(a) Active protection of minorities with the aim of not merely tolerating them but promoting the preservation of their identities;

(b) Positive discrimination to ensure equal opportunity;

(c) The principle of cultural autonomy manifested in self-governments.

138. The Government is seeking to give minorities the possibility of participating in, and the right to decide on, matters affecting them. The parliamentary representation of minorities is intended to be solved by direct election and by ensuring for them a number of seats in Parliament proportional to their numbers.

139. In addition, the Government is striving to achieve respect for human rights and the rights of minorities not only as a duty of the State, but of all citizens, and that such respect becomes a part of society's moral values. The problems of minority rights therefore occupy an important place in education, teaching and public life.